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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-third session
Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH
THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by Human Rights Advocates,
a non-governmental organization in consultative status
(roster)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[24 July 1991]

LEGAL AND INSTITUTIONAL ASPECTS OF THE RELATIONSHIP
BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

1. The Natural Heritage Institute (NHI), 1/ in conjunction with Human Rights Advocates (HRA), 2/ submits the following intervention to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2. The rapidly deteriorating state of our environment is already well known. A particularly unsettling aspect of humankind's destruction of the Earth's environment is the exploitation and degradation of human beings as part and parcel of the exploitation and degradation of natural resources. The

United Nations Commission on Human Rights encouraged the Sub-Commission to investigate the link between human rights and the environment. 3/ The Sub-Commission appointed Mrs. Fatma-Zhora Ksentini to undertake the investigation. Her efforts reveal that many instruments have been adopted by international, regional and national bodies to strengthen environmental protections to avoid human impacts. However, it is uncertain whether potential victims can use these documents as a legal basis to prevent the environmental threats to their lives, health, livelihood and culture, or to seek redress for injuries.

3. Accordingly, this intervention supports the Sub-Commission's investigation and recommends that it identify the means to strengthen both the substantive and procedural aspects of international, regional and local laws and institutions to protect the human rights of environmental victims, including providing victims with a forum to challenge arbitrary State action. Measures should be developed to reinforce the public's rights to receive information about and to participate in environmental decisions of Governments.

Introduction

4. Today's environmental problems are extremely complex. They are the by-products of natural resource, industrial and agricultural development. Inefficient energy use and negligent waste-disposal practices contribute to this dilemma. Environmental harm can give rise to human rights violations when the harm results in death, disease, emotional deterioration, or the impairment of one's livelihood or culture.

5. Environmental disasters can result from natural phenomena, such as hurricanes and flooding, though human-induced watershed erosion, desertification, and other environmental mismanagement can increase the level of harmful impacts. Often these disasters occur as a direct result of human activities, such as the manufacture and distribution of toxic chemicals, generation of nuclear power, disposal and transport of hazardous waste, and development of natural resources (oil, minerals, water, forests).

6. The Chernobyl nuclear power plant and Bhopal toxic chemical releases are stark reminders that human exposure to hazardous materials can cause death and impair human health. Thousands lost their lives during these catastrophes and even more still suffer the physical, mental and economic effects of the toxic exposure. The Exxon Valdez oil spill also reminds us that environmental destruction can also destroy the livelihood of communities dependent upon that environment, especially those employed in the fishing industry which is most directly affected by marine pollution. More poignantly, the Penans in Sarawak, Malaysia, are suffering the consequences of the 24-hour-a-day logging of the rain forest that serves as their dwelling, and supplies their livelihood, medicines and cultural identify. These losses have forced them to relocate to shanty towns where they have contracted diseases and experience other physical and emotional disabilities. 4/

7. Development projects have had similar consequences. For example, the construction of large dams can cause the spread of disease to local populations, especially when the standing forests are not cleared before creating a reservoir. Common disease epidemics brought on by the construction

of dams include malaria, schistosomiasis and onchocerciasis or river blindness. 5/ River blindness reportedly affected 70,000 people after the construction of the dams in the Volta River region of Africa. 6/ Particularly affected are the indigenous peoples who have not built up immunities.

8. In addition, the exploitation and degradation of natural resources has created a new human phenomenon: "environmental refugees". This category of refugee is comprised of persons fleeing environmental disasters, areas undergoing habitat changes, such as desertification, or contaminated by toxic or hazardous waste. 7/ It is estimated that these refugees are now the largest group of displaced persons in the world, and their numbers are growing. 8/ Approximately 135 million people live in areas undergoing such severe desertification that they will suffer economic hardship and be forced to migrate to already overcrowded urban areas. 9/ One report indicates that the largest number of these refugees reside in Africa. 10/ India has also experienced a tremendous rise in such displaced persons. Approximately 20 million people in India have been "ousted" from their homes since 1947 because of officially sponsored development projects, such as dams and mining, and others have been displaced by the land degradation and pollution caused by these projects. 11/ Furthermore, it is estimated that, during the next century, when the sea level is expected to rise by 1 metre, millions of people will be forced to flee their coastal communities; 50 million people may become refugees from this event. 12/

Human rights implicated by environmental problems

9. The right to life, 13/ universally accepted as a fundamental human right, has been interpreted to include the duty of a State to protect potential victims from life-threatening environmental catastrophes that could occur from acts under its jurisdiction or control. 14/

10. The right to health, declared in treaties and other international instruments, may also impose similar duties upon States. Certain international documents and State constitutions declare a "right to the environment", though the definition of this right is uncertain. 15/ In addition, the loss of livelihood and culture violates rights prescribed in the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights. 16/

Right to information and participation in environmental decisions

11. Important aspects of this issue which must be included in any discussion of the problem are the rights to receive information on government-approved activities and to participate in government decisions that could pose environmental threats to the public. These rights are fundamental to the enjoyment of all other rights, especially because communities that do not know of potentially hazardous threats cannot protect themselves from the risk of harm. It can be maintained that environmental quality and use of environmental resources cannot be sustainable without freedom of information.

12. The General Assembly stated at its first session that

> "[f]reedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated; [f]reedom of information implies the right to gather, transmit and publish news anywhere and everywhere without fetters ..." (resolution (I) of 14 December 1946).

13. Article 19 of the Universal Declaration reaffirms the right of everyone to seek, receive and impart information and ideas through any media regardless of frontiers. 17/ This confers on individuals and NGOs the right to report on government actions. Safeguarding this right is crucial in providing the public with the means to evaluate the public health and safety risks of any project. An informed public could prevent an ill-conceived project from progressing until it is proven to be safe, lobby for regulation of hazardous facilities to decrease the likelihood of accidents and take other such steps to protect itself from harm.

14. This knowledge must be coupled with a right to participate in government decisions that pose environmental threats. Public accountability of any project likely to threaten the survival or livelihood of a community is necessary because it provides the community with an opportunity to independently evaluate the risks and voice concerns regarding the health and safety, technical and economic impacts of a project. The General Assembly has recognized that popular participation is necessary for meaningful socio-economic development and the Commission on Human Rights has received comments on the subject. 18/ The World Commission on Environment and Development, in its report "Our Common Future" (UNEP/GC.4/13, April 1987), concluded that the first stated prerequisite of sustained development is a political system that secures effective citizen participation in decision-making and recommended establishing the right of citizens to take part in environmental decisions. 19/ This is important because individuals, groups and indigenous peoples are generally restricted by many countries from this type of participation. 20/ Furthermore, public involvement in the management of environmental problems can reduce the risk of political, economic and cultural conflict.

Recommendations to the Sub-Commission

15. Resolve that the Special Rapporteur continue her investigation of this subject, especially identify the means to strengthen both the substantive and procedural aspects of international, regional and local laws and institutions to protect the human rights of environmental victims. An important focus of this should be the public's rights to receive information of potential environmental threats and to participate in governmental decisions.

16. Investigate the development of an independent body of environmental human rights experts to hear complaints of and provide for redress to individuals and groups regarding violations of their human rights from environmental harm.

17. Establish a working group to investigate the environmental human rights abuses occurring worldwide and report to the Sub-Commission on interpretation of the rights and responsibilities of nations, individuals and groups

regarding environmental human rights, including the rights of displaced persons living within their own countries, and the public's rights to information and participation in government decision-making processes.

18. Coordinate efforts with intergovernmental agencies and other bodies expert on these issues, including the United Nations Environment Programme, United Nations Development Programme, United Nations Conference on Environment and Development, United Nations Centre on Transnational Corporations, United Nations Educational, Scientific and Cultural Organization, the International Labour Organisation and the Committee on Economic, Social and Cultural Rights.

Notes

1/ The Natural Heritage Institute is a non-profit, non-governmental organization which provides counselling and advocacy for public interest organizations and government institutions on natural resource problems, including international conservation and human rights.

2/ Human Rights Advocates is a non-governmental organization which provides education to the public on their human rights and advocates protection of those rights in international and other fora. It is in consultative status with the Economic and Social Council (category II).

3/ Commission on Human Rights resolution 1990/41 of 6 March 1990.

4/ See HRA/NHI submission to the Sub-Commission, "Destruction of the Rain Forest in Sarawak, Malaysia, and the Penan, an Indigenous People in Peril" (E/CN.4/Sub.2/1990/NGO/22).

5/ Brown & Doem, "Health Aspects of Manmade Lakes", in Ackerman, White & Worthington (eds.), Man Made Lakes, Their Problems and Environmental Effects, Geophysical Mono. No. 17 (Washington D.C., Am. Geo. Union) (1973); Cummings, Dam the Rivers, Damn the People (World Wildlife Fund 1990).

6/ Graham, "Ghana's Volta Resettlement Scheme" in Goldsmith & Hildyard, The Social and Environmental Effects of Large Dams, vol. I & II (Wadebridge Eco. Ctr., Cornwall, United Kingdom, 1986).

7/ In the United States thousands of families have been forced to relocate because of toxic exposure threats. Jacobson, "Environmental Refugees: A Yardstick of Habitability", Worldwatch Paper No. 86 (1988).

8/ Ibid.

9/ Ibid., p.11.

10/ It is estimated that most of these come from countries between Mauritania and Senegal, through the Sudan. Ibid., pp. 11-14.

11/ Maloney, "Environmental and Project Displacement of Population in India. Part I: Development and Deracination", Universities Field Staff International, No. 14 (1990-91).

12/ Jacobson, op. cit.

13/ Universal Declaration of Human Rights, art. 6; International Covenant on Civil and Political Rights.

14/ Kiss & Shelton, International Environmental Law (1991).

15/ See, e.g., article 24 of the African Charter on Human and Peoples' Rights (Nairobi, June 1981); P. Gormley, "The Legal Obligation of the International Community to Guarantee a Pure and Decent Environment: The Expansion of Human Rights Norms", 3 Geo. Int'l L. Rev. 85 (1990).

16/ Arts. 23, 25, 27 of the Universal Declaration of Human Rights; arts 6, 11, 12, 15 of the International Covenant on Economic, Social and Cultural Rights.

17/ The United Nations Educational, Scientific and Cultural Organization (UNESCO) General Conference adopted by consensus a resolution which stressed that the elimination of informational inequities requires Governments to remove the internal and external obstacles to the free flow and wider dissemination of information and ideas. Resolution 21 C/4.19 of the General Conference of UNESCO at its twenty-first session (Belgrade, October-November 1980).

18/ See United Nations document A/38/338 (Study on Popular Participation) and Commission on Human Rights documents E/CN.4/1984/12 (Question of Popular Participation), E/CN.4/1985/10, E/CN.4/1986/11, E/CN.4/1987/21, E/CN.4/1988/11, E/CN.4/1989/11, E/CN.4/1991/11.

19/ The Convention on the International Right of Correction, annexed to General Assembly resolution 630 (VII) of 16 December 1952, indicates that contracting States should implement the right of their peoples to be fully and reliably informed, and to improve understanding between their peoples through the free flow of information.

20/ The lack of national institutional structures and legal protective agencies in developing countries and corruption by those in authority positions hinder the achievement of participatory democracy. See, e.g., Cummings, supra.